UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

QUICKEN LOANS INC. Respondent, and AUSTIN LAFF, An Individual.	)	Case 28-CA-146517

QUICKEN LOANS INC.'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN SUPPORT OF EXCEPTIONS, DUE TO RECENT CHANGE IN LAW

Pursuant to Sections 102.46 and 102.47 of the National Labor Relations Board ("Board" or "NLRB")'s Rules and Regulations, and the Board's inherent authority to entertain argument concerning the impact of changes in the law, Respondent Quicken Loans Inc. ("Respondent") hereby requests leave to file its Supplemental Brief in Support of Exceptions to the Decision of the Administrative Law Judge ("Supplemental Brief"), which is attached as **Exhibit A**.

Respondent makes this request because there have been significant changes in applicable law, including under *The Boeing Company*, 365 NLRB No. 164 (Dec. 14, 2017), which impact the Board's analysis of the Exceptions in this case. Charging Party Austin Laff ("Laff") was terminated in connection with a violation of a "rule" instructing employees not to engage in unprofessional, offensive conversation about clients in public areas; he participated in an expletive-filled griping session about clients in a public area, then lied during Quicken Loans' investigation into this incident. The Administrative Law Judge ("ALJ") held that Laff's termination was an unlawful enforcement of an overbroad work rule, even though the client-

related complaints were completely unrelated to any employee's terms or conditions of employment. Although the ALJ's finding was erroneous even under then-current law, the "rule" found to be unlawful by the ALJ is clearly a Category 1—lawful—work rule under the new standard articulated by the Board in *The Boeing Company*, as it was a "rule[] requiring employees to abide by basic standards of civility." *Id.* at 15. The Board made clear that *The Boeing Company* was to be applied retroactively. *Id.* at 17. Given this instruction, the Board should allow Respondent to file its Supplemental Brief, which discusses the impact of this change in law.

Further, the ALJ's ruling relied on an overly-expansive definition of protected concerted activity, which stretches beyond recent guidance by the Supreme Court. Although protected concerted activity is only intended to include activity relating to employees' terms and conditions of employment, the ALJ erroneously expanded the definition of protected concerted activity to include Laff's participation in an expletive-filled rant about client conduct, which was completely unrelated to any employee's terms or conditions of employment. However, the Supreme Court recently ruled to overturn a similarly expansive definition of protected concerted activity in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (May 21, 2018), by rejecting the employees' argument that Section 7's protection of "concerted activities" should be read to include class and collective legal actions, despite the fact that the NLRA lacks any guidance on the proper adjudication of class or collective actions in court or arbitration. *Id.* at 1625. For this additional reason, the Board should allow Respondent to file its Supplemental Brief, which applies this new guidance from the Supreme Court to the instant action.

Finally, the Board has also recently confirmed that companies can lawfully enforce rules intended to protect confidential and financial information from disclosure to third parties, such as

the standard applied by Quicken Loans here. *See KHRG Employer, LLC*, 366 NLRB No. 22, slip op. at 3 (Feb. 28, 2018) (finding a company lawfully discharged an employee for allowing non-employees access to secured areas while engaging in protected concerted activity). Because Quicken Loans similarly sought to protect confidential client and financial information from being publicized openly to third parties by asking employees not to discuss this information in public areas, the Board should accept and consider the additional support provided in Respondent's Supplemental Brief.

RELATED PROCEDURAL POSTURE

Respondent timely filed exceptions and a Brief in Support of Quicken Loans' Exceptions to the Decision of the Administrative Law Judge ("Exceptions Brief") on May 16, 2016. Respondent then timely filed a Reply Brief in Further Support of Its Exceptions of the Administrative Law Judge ("Reply Brief") on June 14, 2016. This case was then stayed, pursuant to settlement discussions, and was recently severed from the remaining allegations, which have been settled. (*See* **Exhibit B** – July 19, 2018 Order.)

REASONS FOR ACCEPTING THIS BRIEF

The Supplemental Brief will assist the Board in resolving issues raised by Respondent's exceptions, which have been impacted by recent changes in law. Specifically, (1) the alleged unlawful "work rule" in this case is completely lawful under the Board's new *Boeing* standard, (2) the Supreme Court recently rejected an expansive reading of protected concerted activity, similar to what the ALJ relied on in this case, and (3) the Board has recently confirmed that companies can lawfully enforce rules intended to protect confidential and financial information,

such as the rule found to be unlawful here. For the foregoing reasons, this motion for leave to file the accompanying Supplemental Brief should be granted.

Date: August 6, 2018

Respectfully submitted,

By: Harry I. Johnson III GT

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Exhibit A to Motion
(Supplemental Brief)

Exhibit A to Motion
(Supplemental Brief)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

QUICKEN LOANS INC. Respondent, and AUSTIN LAFF, An Individual.	)	Case 28-CA-146517

QUICKEN LOANS INC.'S SUPPLEMENTAL BRIEF IN SUPPORT OF EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE, DUE TO CHANGE IN LAW

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Dated: July 31, 2018

I. INTRODUCTION

Respondent Quicken Loans Inc. ("Quicken Loans") respectfully submits this Supplemental Brief in Support of Exceptions to the Decision of the Administrative Law Judge ("Supplemental Brief") due to changes in applicable law, including under *The Boeing Company*, 365 NLRB No. 164 (Dec. 14, 2017). The Board made clear that *The Boeing Company* was to be applied retroactively and, as set forth in more detail in this Supplemental Brief, it has application here. *Id.* at 17. Charging Party Austin Laff ("Laff") was terminated in connection with an expletive-filled griping session about clients in a public area. Laff engaged in this griping session despite having received an email reminder just days before that Quicken Loans team members should not make disparaging remarks about clients in public or shared spaces where clients might be present. Just as importantly, Laff lied during Quicken Loans' investigation into this incident, and later admitted his dishonesty. The Administrative Law Judge nonetheless found that Laff's termination was an unlawful enforcement of an overbroad work rule, even though the client-related complaints were completely unrelated to any employee's terms or conditions of employment.

This Supplemental Brief is filed pursuant to Section 102.47 of the Board's Rules and Regulations, as amended, and the Board's inherent authority to entertain argument concerning the impact of changes in the law. Other than these five specific exceptions, however, Quicken Loans expressly preserves all other exceptions and arguments articulated in its May 16, 2016 Exceptions. For ease of reference, Quicken Loans has attached a list of remaining exceptions in this case as **Exhibit 1**.[1] Because this Supplemental Brief focuses narrowly on recent

[1] Quicken Loans submits this Supplemental Brief concurrently with its request to withdraw five (5) of the Exceptions previously filed in this case, pursuant to an Informal Settlement Agreement that resolves a portion of the claims in this matter. The Informal Settlement Agreement was approved by the Board on July 19, 2018.

developments in relevant law, Quicken Loans respectfully asks that the Board consider this brief in conjunction with its Brief in Support of Quicken Loans' Exceptions to the Decision of the Administrative Law Judge ("Exceptions Brief") and Quicken Loans' June 14, 2016 Reply Brief in Further Support of Its Exceptions of the Administrative Law Judge ("Reply Brief").[2] Although Laff's termination was completely lawful, even under then-current law, recent developments in the law further dictate that the Board must reverse the ALJ's erroneous decision.

II. SUMMARY OF FACTS RELEVANT TO CHANGES IN LAW

On February 3, 2015, Quicken Loans Director Deon Dwyer ("Dwyer") sent an email to all employees in Quicken Loans' Scottsdale office to remind them not to discuss specific clients, client profiles, the costs and rates provided to a particular client, or the amount of incentive pay received from processing a client's loans, in any ***public*** area of Quicken Loans' workplace, including the restrooms and smoking areas of the building where other tenants, members of the public, clients, and potential clients are likely to be. Dwyer also asked employees to be proactive in reminding their colleagues not to have such conversations in public areas: "if someone around you is having an inappropriate or questionable conversation speak up and remind them of where they are." GC Ex. 10(d). Dwyer's email explained the rationale:

> What if the way we speak about the client comes off non-professional, what would happen to the potential client?
>
> What if the client or potential client in these areas are offended by curse words? Based on the public conversations we are having would anyone still want to work with us or go elsewhere?

[2] This Supplemental Brief does not cover the prior argument concerning the fatal logic error in the ALJ's analysis, which requires his decision to be overturned: (1) a legal finding of protected concerted activity was required for virtually all theories advanced by the GC; (2) the GC rested without proving this vital element of his case; and (3) to plug this "evidentiary hole," the ALJ improperly drew an adverse inference against Quicken Loans for the GC's decision to forgo obtaining the necessary testimony, which essentially shifted the burden to Quicken Loans to refute an unestablished prima facie case.

GC Ex. 10(c), 10(d).

Just eight days later, on February 11, 2015, Laff participated in an offensive, expletive-filled griping session ***about clients, in a public area***. Specifically, Laff provided the following testimony regarding this conversation, which occurred in a public restroom adjacent to Quicken Loans' office:

> I cross paths with Mr. Woods on the way to the restroom. He looked kind of upset so I said something to the effect of, "Hey Mike, Smile." And he proceeded to tell me that he had a *client* who had been dropped into his pipeline who had refinanced about four years ago and had been trying to get in touch with a Client Specialist for over a week, and *that client* should get in touch with a fucking Client Care Specialist and ***quit wasting his fucking time*** . . . I responded basically by just telling him I understood why he was frustrated.

ALJD 3:15-23; Tr. 213:12-214:9 (emphasis added). Although conflicting accounts of this restroom conversation were presented at hearing, the ALJ credited this version. President's Club Solutions Consultant Jorge Mendez ("Mendez") was also in the restroom at the time, and overheard the scathing gripe about clients. Recognizing that this conversation violated the instructions in Dwyer's email just days earlier, upon returning to his desk, Mendez forwarded Dwyer's February 3 email to all team members in the Scottsdale office to remind them that they should not speak unprofessionally about clients in public areas of the workplace, or state that "clients are wasting [their fucking] time." GC. Ex. 10(b).

Mendez also reported what he heard in the restroom to two Directors at Quicken Loans, and the Company began an investigation into the matter. Tr. 22:8-10, 18-20. Regional Vice President Andrew Glomski ("Glomski") participated in the investigation, and decided to meet with Laff, who had been identified at the time as the speaker. Tr. 30:17-18, 81:18-83:12, 180:25-181:20, 218:3-8. Because Quicken Loans demands that its employees act with honesty and integrity, Glomski decided that if Laff was honest about being involved in the conversation,

Laff would receive a warning letter about the incident, but if Laff was dishonest about his involvement in the conversation, Laff would be terminated. Tr. 88:20-90:24; GC Exs. 3, 4(a). Although Glomski stressed the importance of being honest, Laff denied being aware of the conversation in the restroom. Tr. 88:8-89:1; GC Ex. 4(a). Laff was terminated immediately.[3] GC Ex. 4(a). At the hearing, Laff admitted that his responses to Glomski were dishonest. Tr. 218:11-219:2.[4]

The ALJ ultimately ruled that (a) the profanity-laden conversation between Laff and Woods in the public restroom constituted protected concerted activity, (b) Mendez's February 11, 2015 email contained unlawfully broad work rules prohibiting discussion of terms and conditions of employment, and (c) Laff was terminated for violating the "rules" in Mendez's email. ALJD at 11:5-8, 13:42-45, 16:40-45.

III. ARGUMENT

The Board should reverse the ALJ's erroneous rulings for at least three reasons in addition to those set forth in Quicken Loans' Exceptions Brief and Reply Brief, in light of recent changes and developments in applicable law: (1) Laff's termination related to the enforcement of rules found to be lawful by both the *Boeing* decision and the General Counsel's recent

[3] Because this was Woods' first offense and Quicken Loans reasonably believed that Laff was the one who made vulgar client insults in the February 11, 2015 conversation, Woods was issued a written warning, called an "opportunity" letter, for engaging in conversation in which profanity was used in reference to clients in a public area of the workplace. He received the warning on February 12, 2015. GC Ex. 9; Tr. 48:6-10. However, pursuant to the Parties' Informal Settlement Agreement, Quicken Loans has agreed to remove any record of discipline related to the events of February 11, 2015 from Woods' employment files.

[4] As discussed fully in Quicken Loans' Exceptions Brief, Quicken Loans was privileged to terminate Laff for lying. The Board has held that employers have a "legitimate business interest in investigating facially valid complaints of employee misconduct," and may lawfully terminate an employee who was dishonest during an investigation into a complaint stemming from the employee's protected concerned activity, if the employer would have taken the same action even in the absence of the protected activity. *Fresenius USA Manu., Inc.*, 362 NLRB No. 130, slip op. at 1 (2015). Thus, Quicken Loans validly terminated Laff for his undisputed dishonesty. *See* Exceptions Brief at 30-31.

memorandum on Guidance on Handbook Rules Post-*Boeing* (GC 18-04); (2) the ALJ's expansive reading of what should be considered protected concerted activity runs afoul of the guidance provided by the Supreme Court in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (May 21, 2018); and (3) the Board also has recently held that companies can lawfully enforce rules intended to protect confidential and financial information. Each point is discussed further below.

A. The ALJ Found that Laff's Termination was Unlawful Based on a Standard That was Expressly Overruled by the Board in *The Boeing Company*.

In *The Boeing Company*, 365 NLRB No. 164 (Dec. 14, 2017), the Board overruled its prior standard for determining whether facially neutral work rules violate the NLRA. Instead of straining to determine how an extremely cautious employee might possibly interpret a rule, the Board adopted a balancing test in which it evaluates (i) the nature and extent of a rule's potential impact on NLRA rights, and (ii) legitimate justifications associated with that rule. *Id.* at 3. To assist with the application of its new standard, the Board created three different "categories," of rules: Category 1 rules, which generally are lawful; Category 2 rules, which require individualized scrutiny; and Category 3 rules, which generally are unlawful. *Id.* at 15. The Board explained that Category 1 rules included "rules requiring employees to abide by basic standards of civility." *Id*. The Board felt so strongly about the lawfulness of this category of cases that it ***expressly overruled all prior cases*** which held that it violated to Act "to maintain rules requiring employees to foster 'harmonious interactions and relationships' or to maintain basic standards of civility in the workplace." *Id.* at 4 n.15.

The Board ordered that the new *Boeing* standard would be applied retroactively to all

pending cases. *Id.* at 17.[5]

In reviewing the facts and ALJ opinion here, the ALJ clearly held that Laff's termination was unlawful as the enforcement of an "overly broad" work rule. However, the alleged "rule" simply instructed employees not to engage in unprofessional, offensive conversation about clients in public areas, which is clearly a Category 1—lawful—work rule under both *Boeing* and GC Memo 18-04. Because the ALJ's reasoning has been expressly overruled, the Board must reverse the ALJ's erroneous decision.

B. The ALJ's Expansive Reading of What Constitutes Protected Concerted Activity Runs Afoul of Recent Guidance from the Supreme Court.

As stated more fully in Quicken Loans' Exceptions Brief and Reply Brief, the ALJ erred in concluding that Laff engaged in protected concerted activity, as an expletive-filled rant about client conduct is completely unrelated to employees' terms and conditions of employment. The Supreme Court has recently ruled against a similarly expansive definition of protected concerted activity. Specifically, in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (May 21, 2018), the Court rejected the employees' argument Section 7's protection of "concerted activities" should be read to include class and collective legal actions, despite the fact that the NLRA lacks any guidance on the proper adjudication of class or collective actions in court or arbitration. *Id.* at 1625. Instead of trying to fill this void with guesswork, the Court urges that it is more prudent to accept

[5] To provide guidance on the proper application of *The Boeing Company*, the General Counsel recently issued Memorandum GC 18-04, which contained examples of rules which should be placed in each of the "Categories." GC Memo 18-04, Guidance on Handbook Rules Post-*Boeing* (Jun. 6, 2018). The following civility rules were included as examples of Category 1 rules:

- "Conduct . . . that impedes harmonious interactions and relationships will not be tolerated."
- "Behavior that is rude, condescending or otherwise socially unacceptable" is prohibited.
- Rude, discourteous or unbusinesslike behavior is forbidden.
- Disparaging, or offensive language is prohibited.

GC Memo 18-04, at 4.

that the NLRA's silence on these issues indicates that they were never intended to fall within the ambit of the Act in the first place. *Id.*

The Board should heed the Court's warning here and refrain from taking an overly expansive interpretation of protected concerted activity. As stated in Quicken Loans' Exceptions Brief, the dissatisfaction expressed in Laff's February 11, 2015 restroom conversation with Woods related to an individual concern about ***the conduct of a third party client***, i.e., "the client should get in touch with a fucking Client Care Specialist and quit wasting his fucking time." Because Quicken Loans cannot control what requests any given third-party customer might choose to make at any particular time, the Act cannot be rationally interpreted to assume that employees would engage in group action for mutual aid to get their employer to do so. Because the gripes expressed in this conversation have nothing to do with the conduct of Quicken Loans as an employer, it would be erroneous to expand the definition of protected concerted activity to encompass this conversation. For this additional reason, the ALJ's decision should be overturned.

C. The Board Has Also Recently Confirmed That Companies Can Lawfully Enforce Rules Intended to Protect Confidential and Financial Information.

Even if the February 11, 2015 restroom gripe about client conduct could be considered protected concerted activity, which it cannot, the alleged unlawfully broad "rule" that led to Laff's termination was only intended to limit disparaging comments in ***public areas***, where clients and other third parties might be present. As established at the hearing, Quicken Loans' employees are well aware that they may unabatedly discuss wages, hours, and terms and conditions of employment with one another and with third parties, and even Laff admitted that he openly discussed his compensation with other employees without repercussion. Tr. 251:15-22. Employees were only asked to refrain from discussing their compensation

incentives and program details ***in public areas***, where clients might be present; such conversations should only occur in secured areas.

The Board recently found that a company lawfully discharged an employee for allowing non-employees access to secured areas while engaging in protected concerted activity. *See KHRG Employer, LLC*, 366 NLRB No. 22, slip op. at 3 (Feb. 28, 2018). In deciding that the employee had forfeited the Act's protection, the Board focused on the unnecessary risk posed by the employee upon the Company's property, including confidential files and financial documents. Here, Quicken Loans' "rule" similarly sought to protect confidential client and financial information from being publicized openly to third parties, and merely asked employees not to discuss this information in public areas. Thus, following the reasoning in *KHRG Employer*, Quicken Loans lawfully terminated Laff for violating a rule intended to keep sensitive information contained to work areas, and the Board should reverse the ALJ's erroneous decision.

V. CONCLUSION

For the foregoing reasons, Quicken Loans respectfully urges the Board to find merit to its remaining Exceptions to the Administrative Law Judge's decision, and to dismiss all remaining allegations in the Complaint.

Date: July 31, 2018

Respectfully submitted,

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Exhibit 1

Exhibit 1

QUICKEN LOANS INC.'S REMAINING EXCEPTIONS TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE

For the Board's ease of reference, Respondent Quicken Loans ("Respondent" or "Quicken Loans") provides the following list of remaining exceptions to Administrative Law Judge Montemayor's (the "ALJ's") decision dated March 17, 2016. These exceptions were all timely filed on May 16, 2016. This list omits the 5 exceptions Quicken Loans has withdrawn though its concurrently-filed Withdrawal of Certain Exceptions Previously Filed to the Decision of the Administrative Law Judge.

1. The Respondent excepts to the ALJ's characterization at p. 5, lines 24-25 that Jorge Mendez ("Mendez") "attached to his [February 11] email a February 3, 2015, email from Deon Dwyer."

2. The Respondent excepts to the ALJ's conclusion at p. 8, lines 39-40 that "the conversation of Michael Woods ("Woods") and Austin Laff ("Laff") falls within the umbrella of the Board's broad definition of "concerted activity."

3. The Respondent excepts to the ALJ's finding at p. 8, lines 44-46 and p. 12, lines 20-25 that on February 11, 2015,[6] Woods and Laff discussed "common concerns regarding terms and conditions of their employment," and that their discussion related "to how calls are forwarded and whose responsibility it was to field calls" and/or "the manner in which calls were forwarded to him."

4. The Respondent excepts to the ALJ's characterization at p. 8, line 47 and p. 9, lines 1-2 of Woods and Laff's February 11 conversation as "those types of preliminary actions necessary to lay the groundwork for group activity."

[6] All dates herein are 2015 unless otherwise noted.

5. The Respondent excepts to the ALJ's characterization on p. 9, lines 11-16 of Laff's response to Woods' comments in the restroom on February 11 as "vocalized support," and "concurring with Woods."

6. The Respondent excepts to the ALJ's finding and conclusion on p. 9, lines 25-35 that the motive of the employees at issue is irrelevant as to whether an act or communication is undertaken for "mutual aid or protection" under Section 7.

7. The Respondent excepts to the to the ALJ's decision on p. 10, lines 14-16 not to draw an adverse inference against the General Counsel for his failure to call alleged discriminatee Woods.

8. The Respondent excepts to the ALJ's conclusion on p. 10, lines 21-25 that Woods is an agent and within the authority and control of the Respondent.

9. The Respondent excepts to the ALJ's decision on p. 10, lines 39-40 to draw an adverse inference against the Respondent for Woods' failure to testify.

10. The Respondent excepts to the ALJ's assumption on p. 10, lines 20–40 that Respondent had a duty to call Woods as a witness.

11. The Respondent excepts to the ALJ's failure to consider on p. 10, lines 20-40 that the Respondent took no action to prevent Woods from testifying.

12. The Respondent excepts to the ALJ's failure to conclude on p. 10, lines 42-47 and p. 11, lines 1-7 that the General Counsel did not carry his burden of proof to establish that Woods and Laff were engaged in protected concerted activity in the restroom on February 11.

13. The Respondent excepts to the ALJ's decision on p. 11, lines 2-7 to apply the adverse inference against Respondent to resolve any ambiguities regarding the protected concerted nature of Woods and Laff's February 11 conversation in favor of the General Counsel.

14. The Respondent excepts to the ALJ's decision on p. 11, lines 2-7 to apply the adverse inference against Respondent to establish that Woods and Laff were engaged in protected concerted activity during their restroom discussion on February 11.

15. The Respondent excepts to the ALJ's conclusion on p. 11, lines 2-7, p. 12, lines 20-25, and p. 17, lines 14-17 that Woods and Laff's February 11 restroom conversation amounted to protected concerted activity.

16. The Respondent excepts to the ALJ's failure to conclude on pps. 8-10, generally, that the restroom conversation on February 11 related solely to an unprotected individual gripe by Woods about an errant call he had received from a client.

17. The Respondent excepts to the ALJ's failure to conclude pp. 8-10, generally, that the restroom conversation on February 11 was not for mutual aid and protection because it related solely to an unprotected individual gripe by Woods about a random call he had received from a client.

18. The Respondent excepts to the ALJ's failure to conclude pp. 8-10, generally, on policy grounds, that inappropriate and public complaints by employees about customers are not protected under the Act.

19. The Respondent excepts to the ALJ's failure to conclude pp. 8-10, generally, on policy grounds, that complaints by employees about requests from third parties, over which the employer has no control and are not terms and conditions of employment, are not protected under the Act.

20. The Respondent excepts to the ALJ's reliance on p. 11, lines 10-29 on *NLRB v. Burnup & Sims, Inc.*, 379 U.S. 21 (1964) in analyzing Laff's discharge.

21. The Respondent excepts to the ALJ's conclusion on p. 11, lines 25-29 that the Respondent violated the Act, with the ALJ applying the Board's analysis in *NLRB v. Burnup & Sims, Inc.*

22. The Respondent excepts to the ALJ's finding on p. 12, lines 24-25 that the first element of the General Counsel's *prima facie* case, that Laff and Woods were engaged in protected concerted activity, had been met.

23. The Respondent excepts to the ALJ's finding on p 12, line 37 that the General Counsel satisfied his initial burden under *Wright Line.*

24. The Respondent excepts to the ALJ's failure on p. 13, lines 2-7 to find that the Respondent satisfied its burden under *Wright Line*.

25. The Respondent excepts to the ALJ's conclusion on p. 13, lines 7-17 that Woods did not lose the protection of the Act by his statements during the restroom conversation with Laff on February 11.

26. The Respondent excepts to the ALJ's finding on p. 13, lines 3-9 that profanity was the sole reason for Laff's termination and that Respondent tolerated similar profanity in the past.

27. The Respondent excepts to the ALJ's analysis of Woods' discipline under *Atlantic Steel Co.*, 245 NLRB 814 (1979).

28. The Respondent excepts to the ALJ's conclusion on p. 13, line 44 that Mendez's February 11 email contained rules that were unlawful on their face.

29. The Respondent excepts to the ALJ's finding on p. 13, lines 44-47 and p. 14, lines 1-5, that Mendez's email contained a rule against discussion of wages that would violate Section 7.

30. The Respondent excepts to the ALJ's finding on p. 14, lines 4-7 that "like wages, the discussion of specific clients, client profiles, credit, costs and rates that are given to clients all

relate to the most particular aspects of the mortgage banker's work and discussions surrounding these matters lies [sic] at the heart of what constitute their terms and conditions of employment."

31. The Respondent excepts to the ALJ's finding on p. 14, lines 7-14 that the rules in Mendez's February 11 email could be interpreted to preclude "any conversations regarding pay and terms and conditions anywhere."

32. The Respondent excepts to the ALJ's conclusion on p. 14, lines 16-25 that two rules in Mendez's February 11 email are unlawful because they were promulgated in direct response to Section 7 activity.

33. The Respondent excepts to the ALJ's conclusion on p. 14, lines 16-25 that two rules in Mendez's February 11 email are unlawful because they were promulgated for the specific purpose of terminating Laff and later disciplining Woods.

34. The Respondent excepts to the ALJ's conclusion on p. 14, lines 16-25 that two rules in Mendez's February 11 email are unlawful because they were applied to restrict Laff and Woods in the exercise of their Section 7 rights.

35. The Respondent excepts to the ALJ's finding on p. 16, line 28 that a restroom is, in effect, a private area.

36. The Respondent excepts to the ALJ's failure to find on p. 16, line 28 that the Respondents' own undisputed and uncontested communications, and the free access to visitors and clients, rendered the restroom at issue in this case a "public" or shared area under the facts of this case.

37. The Respondent excepts to the ALJ's conclusion on p. 16, lines 19-35 that Glomski gave Laff the impression that his protected concerted activities were under surveillance.

38. The Respondent excepts to the ALJ's conclusion on p. 16, lines 43-45 that Woods and Laff were disciplined pursuant to any "rules" contained in Mendez's February 11 email.

39. The Respondent excepts to the ALJ's finding on p. 17, lines 14-17 that Laff and Woods's discussion on February 11 implicated the concerns underlying Section 7 of the Act.

40. The Respondent excepts to the ALJ's finding on p. 17, lines 17-19 that Woods' discipline and Laff's termination violated Section 8(a)(1) under the "*Double Eagle* rule," described in *Continental Group, Inc.*, 357 NLRB 409 (2011).

41. The Respondent excepts to the ALJ's Conclusions of Law, at p. 17:23-43 that the Respondent violated Section 8(a)(1) of the Act.

42. The Respondent excepts to the ALJ's Remedy and Order, at pp. 18-20.

Exhibit B to Motion
(July 19, 2018 Order)

Exhibit B to Motion
(July 19, 2018 Order)

United States Government

NATIONAL LABOR RELATIONS BOARD
1015 HALF STREET, S.E.
WASHINGTON DC 20570

Re: Quicken Loan, Inc., In-House Realty, LLC, One Reverse Mortgage, LLC, Fathead, LLC, Rock Connections, LLC, and Amrock, Inc. f/k/a Title Source, LLC
Cases 28-CA-075857, 28-CA-146517, 07-CA-145794, 07-CA-179589

ORDER

The parties' Joint Motion to Sever Allegations, Transfer Cases to the Board, and for Approval of an Informal Settlement Agreement is granted. Accordingly, the discharge allegation involving Charging Party Austin Laff in Case 28-CA-146517 is severed from the remaining allegations in that case, Case 07-CA-179589 is transferred to the Board, the parties' Settlement Agreement is approved, and the proceedings are remanded to Region 28 and Region 7 for further appropriate action consistent with the parties' Settlement Agreement.

Dated, Washington, D.C., July 19, 2018

By direction of the Board:

/s/ Farah Z. Qureshi
Associate Executive Secretary

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 2018, true and correct copies of ***Quicken Loans Inc.'s Motion for Leave to File Supplemental Brief in Support of Exceptions, Due to Recent Change in Law*** were filed with the Board and served upon the following by electronic mail:

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Dated: August 6, 2018